IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

WRIT PETITION NO.710 OF 2007

Smt Vatsala Apparao Pawar & Ors. ...Petitioners

Versus

Smt Subhadrabai Maruti Pawar ...Respondent

Shri Niranjan P. Shimpi for the Petitioners.
Shri A.S.Kulkarni for the Respondent.

CORAM : ABHAY S.OKA, J.
DATED : APRIL 09, 2007.

P.C.:

1. Notice for final disposal has been issued on 02nd February, 2007. Heard Advocates appearing for the parties. The Petitioners preferred an Appeal for challenging the judgment and decree dated 27th January, 2004 passed in a suit filed by the Respondent. There was a delay of one year and two months in preferring the Appeal and therefore, an Application for condonation of delay was filed. The said Application has been rejected by an order dated 04th September, 2006 passed by the learned Principal District Judge, Solapur.

2. After having heard the Advocates appearing for the parties, I find that a case for condonation of delay was made out. The ground given by the Petitioners in the Application for condonation of delay was that they had engaged services of an Advocate who had instructed

them not to attend the court till they receive a letter from him calling upon them to attend. It is stated that on 20th April, 2005 the Petitioners learned about the decree when the Respondent came to the suit land and demanded possession of one half share. An application for obtaining certified copy of the judgment and decree was made by them immediately. After obtaining the certified copies, the application was filed. The learned Principal District Judge has observed that the Petitioners have not filed an affidavit of the concerned Advocate and therefore, the contention raised by the Petitioners cannot be accepted. According to the case of the Petitioners, an assurance was given by their Advocate that he would send a letter to the Petitioners as and when their presence is required. When the Petitioners had made such allegation against the Advocate, it was obvious that they were not expected to file affidavit of the said Advocate. Therefore, the learned Judge could not have found fault with the Petitioners for not filing an affidavit of the Advocate.

3. Considering the reasons given in the Application for condonation of delay, the same deserves to be allowed subject to payment of heavy costs to the Respondent. The amount of costs in the present case is quantified at Rs.5,000/-.

4. Hence, Writ Petition is disposed of by passing following order:

(i) The impugned judgment and order dated 04th September, 2006 is quashed and set aside and Civil Misc. Application No.153 of 2005 is allowed subject to condition of the Petitioners paying costs of Rs.5,000/- to the Respondent within a period of eight weeks from today.

(ii) The deposit of the amount of costs with the Appellate Court will be treated as a sufficient compliance with this order.

(iii) If the amount of costs is neither paid nor deposited within the stipulated period of eight weeks, the impugned order will stand.

(iv) If compliance is made by the Petitioners, the Appellate Court will proceed to hear and decide the Appeal on merits.

(v) Writ Petition is partly allowed in above terms.

(vi) Parties to act upon an authenticated copy of

this order.

JUDGE